

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANTONIO CARRERA
Claimant

VS.

IBP, INC.
Respondent
Self-Insured

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Docket No. 196,603

ORDER

Claimant requested review by the Appeals Board of the March 11, 1997, Award entered by Administrative Law Judge Kenneth S. Johnson. Appeals Board member, Gary M. Korte, has recused himself from this case and Jeffery K. Cooper has been appointed Appeals Board Member Pro Tem to serve in his place.

APPEARANCES

Claimant appeared by his attorney, Diane F. Barger of Wichita, Kansas. Respondent, a self-insured, appeared by its attorney, Craig A. Posson of Dakota City, Nebraska. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant asked the Appeals Board to review the findings and conclusions of the Administrative Law Judge in regard to the following issues:

- (1) Nature and extent of claimant's disability.
- (2) Whether claimant is entitled to future medical treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

(1) The dispute that arises, in this case, is whether claimant met his burden of proving his entitlement to permanent partial disability benefits for his work-related left knee injury and alleged work-related back injury. The Administrative Law Judge found claimant had not proven he suffered a permanent injury as a result of his November 2, 1994 accident.

The Appeals Board finds that the Administrative Law Judge's Award should be affirmed. The Appeals Board finds that the Administrative Law Judge's findings and conclusions contained in his award are accurate and appropriate. The Appeals Board concludes there is no need to reiterate those findings and conclusions in this Order. Therefore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions as its own.

Specifically, the Appeals Board finds that the opinion of one of claimant's treating physicians, Zeferino J. Arroyo, M.D., is more persuasive and should be given more weight on the issue of causation than the opinion of Pedro A. Murati, M.D., the physician who more than a year after the accident conducted an independent medical examination of claimant. Dr. Arroyo released claimant to return to regular work on January 6, 1995, without permanent restrictions. He tested claimant's left knee and found it to have a full range of motion. Dr. Arroyo testified that claimant's injured left knee had recovered from the injury and he found no permanent functional impairment due to the injury. Dr. Arroyo also testified that claimant made no complaints to him in reference to an injury to his back during the time he was treating claimant's left knee laceration. The medical notes of Dr. Arroyo, dated December 13, 1994, and January 5, 1995, were admitted into evidence at his deposition, and verified that claimant made no back complaints to Dr. Arroyo during those visits. Dr. Arroyo also instructed claimant to return for further treatment if he had any further problems. Although claimant testified at the regular hearing that he continued to have pain and discomfort in both his left knee and back, he did not return to Dr. Arroyo for those complaints.

Dr. Murati examined claimant on January 8, 1996, more than a year following claimant's work-related accident of November 2, 1994. Dr. Murati assessed claimant with a 10 percent functional impairment of the left lower extremity and a 5 percent whole body impairment for a lumbar strain. The doctor then combined those two functional impairments for a 9 percent whole person functional impairment in accordance with the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised). The Appeals Board finds that Dr. Murati's examination of claimant and his conclusions therefrom are questionable. They are based only on claimant's subjective complaints and not based on any objective findings. The Appeals Board also finds it is significant that claimant testified he related back complaints to both Dr. Arroyo and also Dr. Koprivica, who examined claimant at claimant's attorney's request on May 22, 1995. As previously noted, Dr. Arroyo unequivocally testified that claimant did not relate any back complaints to him during claimant's treatment and examination. Dr. Murati testified he had reviewed Dr. Koprivica's report that contained the findings of Dr. Koprivica's examination of claimant on May 22, 1995. According to Dr. Murati, Dr. Koprivica had indicated in his report that claimant initially had a history of back complaints, but at the time of the examination the back problems had resolved. Dr. Koprivica's deposition was not taken by either party and his report was not stipulated into evidence. However, claimant testified on direct

examination at the regular hearing that he told Dr. Koprivica his back remained symptomatic.

The Appeals Board concludes that the record in this case, as a whole, raises the question of the claimant's credibility. Claimant's complaints of pain and discomfort in both his left knee and back were made more than one year following a minor work-related injury. Furthermore, the Appeals Board points to claimant's testimony of continuing back complaints that were not noted by Dr. Arroyo and were noted in Dr. Koprivica's records as resolved at the time he examined the claimant on May 22, 1995. Additionally, the fact that claimant did not return for further medical treatment with Dr. Arroyo is inconsistent with claimant's testimony that he suffers from debilitating injuries.

(2) The Appeals Board finds claimant is not entitled to an order for future medical treatment because the above finding determined that claimant did not suffer a permanent injury as a result of his accidental injury which occurred on November 2, 1994, and the temporary condition is fully resolved.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Kenneth S. Johnson, dated March 11, 1997, should be, and is hereby affirmed in all respects.

All remaining orders of the Administrative Law Judge are adopted by the Appeals Board

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: Diane F. Barger, Wichita, KS
Craig Posson, Dakota City, NE
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director